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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,875	11/20/2003	Robert H. Feldmeier	706.003PA	9384
25891	7590	07/13/2006		
BERNHARD P. MOLLDREM, JR. 224 HARRISON STREET SUITE 200 SYRACUSE, NY 13202			EXAMINER BECKER, DREW E	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/717,875	<b>Applicant(s)</b> FELDMIEER, ROBERT H.	
	<b>Examiner</b> Drew E. Becker	<b>Art Unit</b> 1761	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-20.

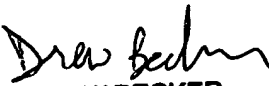
Claim(s) withdrawn from consideration: 21-30.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.


**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
**DREW BECKER**  
**PRIMARY EXAMINER**  
7-8-06

Continuation of 3. NOTE: the new issues include the new limitations to claims 11 & 13, as well as claims 2-6 and 9-10 requiring the limitations of claims 7-8 .

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that Hastings does not teach 175 degrees F, or a 60 second hold time. However, it would have been obvious to one ordinary skill in the art to use a fluid to milk flow ratio of 2:1, a milk velocity of less than 6 ft/sec, and a hold time of at least 60 seconds, in the invention of Hasting since Hasting simply did not recite any specific flow parameters, since Hasting taught adjusting the ratio of flow rates (column 3, lines 29-40), adjusting the milk speed and increasing the hold time (column 4, lines 14-32), and since these flow parameters would have helped ensure full pasteurization of the milk. McElroy teaches a process for pasteurizing milk by using counter-flow regenerative heat exchangers which use the pasteurized milk as the heating medium (Figure 1, #12 & 34) and an about 15 degree F difference between the milk entering (about 160-180 degrees F) and the fluid leaving the heater (Figure 1, #36). It would have been obvious to one of ordinary skill in the art to incorporate the milk heat regeneration and temperature difference of McElroy into the invention of Hasting since both are directed to methods of pasteurizing milk, since Hasting already included a second counter-flow regenerative heat exchanger (Figure 1, #7), since a larger temperature difference would have provided faster heating, and since the use of pasteurized milk as the heating medium would have eliminated the need for the regenerative circuit of Hasting (Figure 1, #9-11), thereby reducing the amount of equipment and energy needed. Applicant argues that Hasting and McElroy do not mention denaturation of protein. However, both references inherently provided denaturation of protein such as whey since this occurs at temperatures as low as 70 degrees C.

  
DREW BECK  
PRIMARY EXAMINER  
7-8-06